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Washington, DC 20529

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: DEC 2 6 2006

LIN 04 230 50151

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a senior research fellow at the University of Washington School of Medicine (UWSM). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest. Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the

> "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

In an introductory letter, counsel states that the petitioner "is an outstanding research scientist with extraordinary ability and exceptional skills in the field of reproduction research" whose "contributions have been internationally recognized as indicated by the testimonial letters" in the record. Of the six witnesses who provide letters in the petitioner's initial submission, four are college or university faculty members who participated in the petitioner's professional training. The remaining two witnesses both studied medicine at Shandong Medical University in the early 1980s, when the petitioner was also a medical student there. We shall discuss examples of these letters here.

[redacted], an associate professor at UWSM, states:

> [The petitioner] joined my laboratory in March of 2003. My laboratory focuses on mammalian reproduction, using the mouse as a model system. One of our interests is in determining how androgenic steroid hormones, testosterone and its derivatives, control sperm development (spermatogenesis). . . . Since joining my lab, [the petitioner] has been creatively characterizing the process of spermatogenesis in these mice. [The petitioner's] mastery of advanced microscopy, and her careful attention to detail, makes her uniquely qualified for this project. One of her findings is that androgens regulate the adhesion between developing spermatogenic cells and support cells within the testis. . . .
>
> [The petitioner] has recently discovered that a gene, whose function is important for the formation of tight junctions between testicular somatic cells, is no longer expressed in the absence of androgen signaling. This exciting and provocative result suggests that androgens regulate the formation of the blood-testis barrier . . . [which] protects differentiating spermatogenic cells from being destroyed by the immune system.

[redacted], an associate professor at the University of Alabama, discusses the petitioner's earlier work with a protein known as "swallow":

> [The petitioner] entered the graduate program of the University of Alabama in the fall of 1997, and began working in my lab from the beginning. She had had excellent prior training in microscopy, and a pressing issue in my lab required such expertise. The problem on which [the petitioner] worked is a recently-discovered by widespread phenomenon concerning how the cells of our body become asymmetric in their organization. . . . In some cases, we know that cellular asymmetry is determined by the localization of specific molecules called messenger RNAs in particular locations within the cell. . . . [The petitioner's] project was to resolve a particular problem about the action of one localization mechanism . . . in the fruit fly *Drosophila*. . . .
>
> The insight that [the petitioner] provided was in identifying and explaining how the swallow protein acts in mRNA localization. In particular, [the petitioner] discovered that mutations in the *swallow* gene affect the organization of the actin cytoskeleton, and only indirectly affect the microtubule cytoskeleton. . . . The important implication of this work is that it distinguishes between two alternative interpretations for the swallow protein: first, as a direct regulator of the microtubule cytoskeleton, or second, as an "anchor" to which mRNAs are attached. . . . [The petitioner] made the "microtubule regulatory" role less likely, and the second more likely. . . . A complete understanding of mRNA localization will require that each of the pieces of that mechanism be understood in detail, and [the petitioner's] work provides crucial insights into swallow function.

[redacted], an associate professor at the University of Pennsylvania Medical Center, states: "Before coming to America, [the petitioner] had established herself as an internationally renowned young scientist in the field of viral pathology." The record contains no objective evidence to establish the extent of this claimed international renown; certainly none of the other witnesses describe the petitioner's reputation in comparable terms. We note that the petitioner's current work in reproductive genetics does not appear to be directly related to viral pathology. Unsubstantiated claims of recognition in a field in which the petitioner no longer works are not especially persuasive. [redacted] claims no expertise in the petitioner's current area of research.

Counsel observes that the petitioner has published her work in journals and presented it at conferences. This, by itself, is unremarkable, given that the purpose of scientific research is to uncover and then disseminate new information. While attaining exposure for one's work can be challenging and competitive, neither publication nor presentation is a rare privilege granted only to a relatively small number of researchers. Therefore, it cannot suffice for the petitioner simply to show that his work has appeared in journals and at conferences. The petitioner must provide an objective gauge of the impact of that work, such as citation by independent researchers; a letter from a collaborator or mentor, while not without value, is not objective evidence of this impact.

Generally, the more times a journal article has been cited by researchers other than its own authors or their close collaborators, the more attention and impact that article can be said to have had. In this instance, the

petitioner's initial submission documents one citation of the petitioner's work. Counsel describes the citing article as "a paper written by other scientists in which beneficiary's paper was cited." What counsel fails to mention is that one of these "other scientists" is [redacted] who is a co-author of the cited paper. Therefore, this is an instance of self-citation rather than evidence of impact and influence extending beyond the petitioner's own research group. The petitioner also submits a copy of a request for a reprint of the petitioner's article. This is not evidence of the article's impact, so much as an expression of interest by a researcher who may not have read the article yet.

On May 27, 2005, the director issued a request for evidence, instructing the petitioner to submit "documentary evidence" of her "influence on the field as a whole," such as citations of her published work or "official recognition of [her] achievements." The director did not request additional witness letters or state that such letters would qualify as "documentary evidence." Nevertheless, the petitioner's response to the notice includes eight new witness letters, the majority of which are from individuals with demonstrable connections to the petitioner or her mentors. The three most independent witnesses appear to be Professor [redacted]f of the University of Massachusetts Medical School, [redacted] of the University of Toronto, and [redacted] an assistant professor at Brown University.

Prof. Theurkauf, who states that he encountered the petitioner's work through a paper she published in 2002, asserts that the petitioner's "research achievements may . . . provide insight into fundamental biological processes that are disrupted in specific disease states." [redacted] states:

> [The petitioner] was the first person to identify a novel irregular structure of the actin cytoskeleton in the oocytes of swallow mutants, and demonstrate that other developmental defects, such as microtubule and nuclear defects, are caused by actin cytoskeletal defects. This work confirmed an earlier hypothesis in my lab, and is an important milestone in understanding the function of Swallow during development.

[redacted] predicts that the beneficiary's 2002 article "will have substantial influence in this field."

[redacted] states:

> I have never collaborated or worked with [the petitioner] directly. My knowledge of [the petitioner's] work comes directly from meeting with her at a recent international conference on germ cells at Cold Spring Harbor Laboratory. . . . In my professional opinion, [the petitioner's] impressive achievements clearly show that she is a promising young biomedical scientist. [The petitioner] is poised to make important contributions to the field of gonadal development and the continuation of her work may reveal important insights into a number of important health problems in the United States and abroad. . . .
>
> [The petitioner] clearly possesses extraordinary expertise in microscopy that is critical for her future success as a medical scientist. . . .

> Using state-of-the-art confocal microscopy and live imaging techniques, [the petitioner] discovered that the actin cytoskeleton is defective during egg development of a swallow mutant in Drosophila. She also clearly demonstrated that these primary actin cytoskeleton defects in the swallow mutant account for other phenotypes of the swallow mutant, such as microtubule defects and nuclear defects. . . . [The petitioner's] work is a milestone in understanding the role of swallow protein during development. . . .
>
> [The petitioner's more recent] findings have significant impact on the clinical treatment of male infertility and possibly testicular cancer.

Most of the remaining witnesses offer varying degrees of praise for the petitioner's work with the swallow protein in *Drosophila*; fewer witnesses discuss the petitioner's more recent work involving androgens. With regard to the latter project, [redacted]d, Dean of Sciences at Washington State University, states that the petitioner's "innovative research is a significant contribution to understanding the role of androgens in spermatogenesis. Her continued and uninterrupted work on androgen function and the blood-testis barrier is of crucial importance to progress in this field." The petitioner's current research supervisor, [redacted] identifies [redacted] as one of the petitioner's collaborators.

The petitioner submits copies of three articles that cite her work with [redacted] Two of these three articles are, themselves, by [redacted], including the previously mentioned article included in the petitioner's initial submission. The third article, by [redacted] of the University of Cambridge, appeared in *Nature Reviews Molecular Cell Biology* in May 2005. We note that the purpose of a review article is to discuss the literature on a given subject, rather than to report original research findings. In all, the article cites at least 130 articles. Nothing in the article singles out the petitioner's article as being especially significant in relation to the many other cited articles. The petitioner has highlighted one sentence from this review article: "From stage 10b onwards, the retention of bicoid at the anterior requires Swallow protein, which becomes enriched at the anterior cortex." This sentence ends with endnoted references to four articles, including the beneficiary's 2002 article.

With respect to recognition of the petitioner's work, the petitioner submits letters and documentation regarding various grants that have funded the petitioner's projects. It is the nature of grant funding that it is awarded at the beginning of a project, or while that project is ongoing, in order to defray the expected future costs of that project. As such, grant funding of this kind demonstrates recognition of the goals of a given project, rather than its not-yet-realized outcome. Approval of a grant application may demonstrate confidence that the proposed research will be successful, but it cannot ensure the impact of work that was yet to occur as of the time of the grant application's filing.

[redacted] of Qingdao Medical College, where the petitioner was an assistant professor from 1994 to 1997, states: "Our group won Science and Technology First Class Award in 1997, for significant contribution to the development and progress of science and technology in China. This award is issued by Shandong Population Council." [redacted] states that the criteria for the award are: "(1) An important invention of technology is made. (2) An important discovery in science is accomplished. (3) The invention or discovery represents a significant advancement of the existing technology of theory in science." The

translation of the award certificate identifies the award as "a First Class Shandong Provincial Population Science and Technology Progress Award." The record contains no objective background information about this award. We note that, pursuant to 8 C.F.R. § 204.5(k)(3)(ii)(F), government recognition for achievements can form part of a claim of exceptional ability, but additional evidence would be necessary for a finding of exceptional ability. It is clear from the plain wording of the statute that exceptional ability in the sciences is not, by itself, grounds for a national interest waiver; aliens of exceptional ability are, as a rule, subject to the job offer requirement.

The director denied the petition on October 6, 2005, acknowledging the intrinsic merit and national scope of the petitioner's occupation, but stating that the petitioner had failed to establish that her work, in particular, stands out to a degree that would warrant an exemption from the job offer requirement. The director observed that the overall importance of an area of research is not a qualifying factor for a waiver, and that publication and grant funding are not rare accomplishments that set the petitioner apart from her peers. The director found the petitioner's citation record to be minimal. The director observed that the citation of the beneficiary's article in *Nature Review Molecular Cellular Biology* "is not distinguishable from 129 other" citations in the same review piece.

On appeal, counsel protests that the director "did not give specific discussions as to the testimonies from the numerous US experts." In this regard, we note that the director did not request witness letters or imply that more letters would satisfy the director's specific request for documentary (rather than testimonial) evidence. Counsel contends that the director "applied criteria that have not been recognized by law or regulation," but neither the statute nor the regulations identify witness letters as being conclusive evidence in national interest waiver petitions. Neither the statutory nor the regulatory language contains any useful guidance as to evidentiary standards. At this time, case law pertaining to the waiver is limited to *Matter of New York State Dept. of Transportation*, the language of which is deliberately general in order to accommodate a wide variety of occupations.

None of this, of course, is to state that witness letters are utterly without value, and in many instances witness letters – in conjunction with other evidence – can provide compelling grounds in favor of granting a waiver. Here, however, the director did not indicate that the petition's weakness was a lack of favorable letters. The director requested objective documentary evidence to clarify and substantiate the claims set forth in the witness letters. We find this request to be reasonable, defensible, and warranted.

Counsel states that the director improperly relied on resources relating to the incidence of publication among researchers. Counsel states that this evidence is irrelevant because "no case law has allowed publication to be included in the minimum requirement in labor certification petitions." Counsel also argues that there is no formal requirement that the petitioner's work "has been published or has been cited." Nevertheless, counsel acknowledges that the petitioner must have "made contribution to US national interest to a substantially greater degree than would a US worker having minimum qualifications." One of the chief means by which a research scientist contributes to her field, and to the United States as a whole, is by disseminating her findings throughout her specialty. The director, quite sensibly, cited evidence that publication is very common in the sciences, to the point of being effectively mandatory in certain contexts. This is relevant because counsel, at

the outset, listed the petitioner's published work as evidence of her impact on the field. If publication is relatively commonplace in the petitioner's field, then the importance of her publications is not self-evident.

Because a research scientist in the petitioner's specialty does not stand out simply by publishing her work, we must determine the impact of that published work. Independent citations provide a benchmark by which we can see the extent to which the petitioner's articles have influenced the subsequent work of other researchers. While this benchmark is not perfect, it possesses the key attributes of objectivity and quantifiability that are lacking from laudatory letters from co-authors and other collaborators.

Counsel states that the witness letters "have to some extent identified beneficiary's specific achievements . . . and have testified that such achievements are beyond what the average people with similar educational background can make." Obviously, simply listing the petitioner's findings cannot suffice; it is difficult to imagine a grant-funded research project that yields no findings whatsoever. (Even a negative result, in which researchers fail to verify a hypothesis or confirm a prediction, is a finding.) With regard to the second part of counsel's quotation, above, the director is justified in expecting some sort of independent validation to back up the assertions of witnesses whom the petitioner has personally selected to support her claim. In this instance, the petitioner has not shown that her work has influenced the work of other researchers. Her citation record, as submitted, is limited to self-citations by a co-author and a passing reference in a review article that discusses well over a hundred articles. We do not doubt that the petitioner sees her own work as important, or that she has impressed her professors, collaborators, and employers; but the record is devoid of persuasive evidence that her work has earned any wider recognition or had greater impact. We see, instead, repeated references to the promise and potential that the petitioner holds for future accomplishments. When viewed in the larger context of the record as a whole, we cannot share counsel's conviction that the witnesses' use of words like "milestone" presumptively establish the petitioner's eligibility for the benefit sought. Eligibility for the national interest waiver is not, and should not be, merely an issue of ensuring that the right words appear in witness letters. (Otherwise, the potential for abuse is obvious.) The director legitimately noted weaknesses in the petitioner's evidence, and counsel does not overcome these weaknesses by asserting that the director did not devote enough attention to the petitioner's witness letters.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.